

beginning with the 1995 taxable year. In determining the level funding limitation period and the funding period, the Internal Revenue Service shall assume that a deductible payment will be made to a nuclear decommissioning fund for the 1995 taxable year. Thus, under paragraph (b) of this section, the level funding limitation period begins on January 1, 1995, and ends on December 31, 2025. Under paragraph (c)(1) of this section, the funding period begins on January 1, 1995, and ends on December 31, 2025.

(iii) In its request for a schedule of ruling amounts, X proposes a ruling amount for each taxable year in the funding period that corresponds to the projected cost of service amount for such taxable year. A schedule of ruling amounts based on the projected cost of service amount would be inconsistent with the level funding limitation of paragraph (b) of this section because the projected cost of service amount for 2005 is less than the projected cost of service amount for 2004. Consequently, under paragraph (a)(3) of this section, no schedule of ruling amounts shall be provided to X unless X proposes an amended schedule of ruling amounts that is consistent with the level funding limitation and the other principles and provisions of this section.

(iv) Assume that X proposes an amended schedule of ruling amounts that provides for ruling amounts of \$400,000 for each taxable year in the funding period. If (A) the schedule of ruling amounts proposed by X is based on the reasonable assumptions and determinations used by the public utility commission in establishing the amount of decommissioning costs to be included in cost of service and (B) the amounts collected pursuant to the proposed schedule, combined with the after-tax earnings on such amounts, will result in a projected balance of the nuclear decommissioning fund as of December 31, 2025, equal to the amount of decommissioning costs allocable to the fund, then, under paragraph (a)(3) of this section, each ruling amount in the initial schedule of ruling amounts shall equal the ruling amount proposed by X in connection with its request for a schedule of ruling amounts. Thus, the ruling amount for the 1995 taxable year and for each subsequent taxable year through 2025 would be \$400,000.

(v) Under section 468A(b) and paragraph (b)(1) of § 1.468A-2, the maximum amount of cash payments that X can make to a nuclear decommissioning fund for any taxable year shall not exceed the lesser of (A) the cost of service amount for such taxable year or (B) the ruling amount for such taxable year. If the projected cost of service amount that was assumed in determining rates under the rate order that was issued on May 15, 1995, is the actual cost of service amount for each taxable year in the funding period and the ruling amounts provided in the initial sched-

ule of ruling amounts are not changed by a subsequent schedule of ruling amounts, then X would be allowed to make a deductible contribution of \$400,000 to a nuclear decommissioning fund for each taxable year in the period that begins with 1995 and ends with 2004 and to make a deductible contribution of \$200,000 to such nuclear decommissioning fund for each taxable year in the period that begins with 2005 and ends with 2025.

Example (3). (i) Y corporation is a calendar year, accrual method taxpayer engaged in the sale of electric energy generated by power plants owned by Y. On June 1, 1990, a nuclear power plant owned by Y began commercial operations in State B. In the first ratemaking proceeding in which the nuclear power plant was included in rate base, the public utility commission of State B assumed that the nuclear power plant would be included in rate base for each year in the period that began with 1990 and ended with 2020. In addition, for each taxable year in the period that began with 1990 and ended with 2017, Y made a deductible contribution of \$750,000 to a nuclear decommissioning fund established by Y. The \$750,000 contribution equalled the cost of service amount and the ruling amount for each taxable year in the 28-year period.

(ii) On August 30, 2017, the public utility commission of State B issues a final rate order for the six-year period beginning on January 1, 2018, that authorizes Y to collect decommissioning costs of: (A) \$500,000 for 2018, 2019 and 2020; (B) \$1,500,000 for 2021; (C) \$1,000,000 for 2022; and (D) \$750,000 for 2023. In determining the amount of decommissioning costs to be collected from ratepayers residing in State B, the public utility commission assumes that decommissioning costs will no longer be included in cost of service after 2023. In addition, in determining the rate of return to be earned by Y with respect to the nuclear power plant, the public utility commission assumes that the nuclear power plant will no longer be included in rate base after 2020.

(iii) Under paragraph (i)(1)(iii) of this section, Y is required to request a revised schedule of ruling amounts on or before March 15, 2019. Assume that Y makes a timely request for a revised schedule of ruling amounts in accordance with the rules of paragraph (h) of this section. In its request, Y proposes a ruling amount for each taxable year in the period that begins with 2018 and ends with 2023 that corresponds to the amount of decommissioning costs to be included in cost of service under the rate order of August 30, 2017.

(iv) Under paragraph (b) of this section, the level funding limitation period begins on January 1, 1990, and ends on December 31, 2020. Under paragraph (c)(1) of this section, the funding period begins on January 1, 1990, and ends on December 31, 2023.

(v) If (A) the assumptions and determinations used by the public utility commission in establishing the amount of decommissioning costs to be included in cost of service are reasonable and (B) the projected balance of the nuclear decommissioning fund as of December 31, 2023 (taking into account the fair market value of the assets of the fund as of January 1, 2018, and the estimated after-tax rate of return to be earned by the assets of the fund) will equal the amount of decommissioning costs allocable to the fund, then, under paragraph (a)(3) of this section, each ruling amount in the revised schedule of ruling amounts shall equal the ruling amount proposed by Y in connection with its request for a schedule of ruling amounts. Thus, the ruling amount for 2018, 2019 and 2020 would be \$500,000, the ruling amount for 2021 would be \$1,500,000, the ruling amount for 2022 would be \$1,000,000 and the ruling amount for 2023 would be \$750,000.

(vi) Although the ruling amount specified in the revised schedule of ruling amounts for 2018, 2019 and 2020 is less than a ruling amount specified in a prior schedule of ruling amounts for years prior to 2018, the revised schedule of ruling amounts is consistent with the level funding limitation. Under paragraph (i)(3) of this section, a ruling amount specified in a revised schedule of ruling amounts for any taxable year in level funding limitation period may be less than one or more ruling amounts specified in a prior schedule of ruling amounts for a prior taxable year. In addition, although the ruling amount specified in the revised schedule of ruling amounts for 2022 and 2023 is less than a ruling amount specified in such schedule for a prior taxable year, the revised schedule of ruling amounts is consistent with the level funding limitation because the level funding limitation period ends on December 31, 2020.

(d) *Decommissioning costs allocable to a fund.* The amount of decommissioning costs allocable to a nuclear decommissioning fund is determined for purposes of this section by applying the following rules and definitions:

(1) *General rule.* The amount of decommissioning costs allocable to a nuclear decommissioning fund is the taxpayer's share of the total estimated cost of decommissioning the nuclear power plant to which the fund relates, multiplied by the qualifying percentage.

(2) *Total estimated cost of decommissioning.* (i) Except as otherwise provided in paragraph (d)(2)(ii) of this section, the total estimated cost of decommissioning a nuclear power plant is the reasonably estimated cost of de-

commissioning used by the applicable public utility commission in establishing or approving the amount of decommissioning costs to be included in cost of service for ratemaking purposes. If, in establishing or approving the amount of decommissioning costs to be included in cost of service, the public utility commission uses an estimated cost of decommissioning that is equal to a generic estimate of the cost of decommissioning as determined by the Nuclear Regulatory Commission (or an estimated cost that is based on the generic estimate adjusted for inflation), the Internal Revenue Service may, at its discretion, accept such amount as a reasonable estimate of the cost of decommissioning. In addition, if the estimated costs used by the applicable public utility commission are expected to be paid in any taxable year other than the taxable year that includes the last day of the funding period or the immediately succeeding taxable year, such costs must be adjusted (increased or decreased, as the case may be) by discounting or compounding such costs at the after-tax rate of return from the date such costs are expected to be paid to the last day of the funding period.

(ii) If, in establishing or approving the amount of decommissioning costs to be included in cost of service, the applicable public utility commission assumes a projected balance of amounts set aside for decommissioning (whether or not such amounts are provided by a nuclear decommissioning fund) that is less than the total estimated cost of decommissioning assumed by the public utility commission, the total estimated cost of decommissioning for purposes of determining the schedule of ruling amounts shall equal the projected balance of amounts set aside for decommissioning that was assumed by the public utility commission.

(3) *Taxpayer's share.* The taxpayer's share of the total estimated cost of decommissioning a nuclear power plant equals the total estimated cost of decommissioning such nuclear power plant multiplied by the percentage of such nuclear power plant that the qualifying interest of the taxpayer represents (see paragraph (b)(2) of § 1.468A-